REMARKS/ARGUMENTS

The present application has been reviewed in light of the Notice of Non-Compliant Amendment dated April 27, 2009 and the Office Action dated January 6, 2009. Claims 16-35 are currently pending, claims 17-22 having been amended herein. Claims 23-35 have been added. Applicant respectfully requests early and favorable reconsideration of this application.

In the Notice of Non-Compliant Amendment, the Examiner asserted that several of the claims were not present. Upon review, Applicant has recognized that several of the claims, namely claims 1-15, which were previously canceled, were not identified as being cancelled in the response to the Office Action mailed January 6, 2009. Applicant respectfully submits that each of the claims is now provided with the proper status identifier.

The Abstract of the specification was objected to for containing legal phraseology as set forth in MPEP §608.01(b). The Abstract has been amended herein in a manner which is believed will overcome said objection. Accordingly, in view of the amendments to the Abstract, Applicants respectfully submit that the objection to the Abstract has been overcome and should be withdrawn.

The drawings were objected to under 37 C.F.R. 1.83(a) for not showing every feature of the invention specified in the claims. Specifically, the Office Action states, "None of the drawings of Applicant (filed 4/27/2004) illustrates a reference number for a tissue penetrator member, and an actuator having at least two states as recited in claim 16." Accordingly, the specification has been amended to clarify the tissue penetrator member and actuator, coinciding with the summary. As currently amended, the actuator or trigger has the reference character 22 and the tissue penetrator member or tissue penetrator has the reference character 32. "FIGS. 5

and 7 are longitudinal cross sections of the proximal and distal ends respectively of delivery device 20 in the home or equilibrium state." (para. 0031). "FIGS. 6 and 8 depict delivery device 20 in the fully stroked state." (para. 0032). As a result, FIGS. 5 and 6 show the actuator or trigger 22 in both states, and FIGS. 7 and 8 show the tissue penetrator member or tissue penetrator 32 in both states.

Claims 18-20 have been objected to for the recitation of "the provided anchor." In the Office Action, the Examiner kindly states and suggests that "the provided anchor" should be "the surgical anchor." Accordingly, claims 18-20 have been amended herein to coincide with the Examiners suggestion.

Claims 16, and 18-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,551,333 to Kuhns et al. (hereinafter "Kuhns"). Applicant respectfully submits that independent claims 16 is allowable over Kuhns, because Kuhns fails to anticipate each and every feature of claim 16. Accordingly, the rejection of claim 16 in view of Kuhns is respectfully traversed.

Pursuant to 35 U.S.C. § 102(b), a claim is unpatentable only if each and every element set forth in the claim is found, either expressly or inherently, in a single prior art reference. *See* MPEP 2131; *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Independent claim 16 presently recites a delivery device for delivering at least one surgical anchor including, *inter alia*, "an actuator having at least two states, the first state causing the anchor carrier to be in its proximal-most position and the second state causing the anchor

carrier to be in the distal-most position with the penetration section of the surgical anchor exposed beyond the distal end of the delivery tube."

As described in the specification, as originally filed, and shown in FIG. 9 below, when delivery device 20 is in the fully stroked state, penetration shaft 12 and head 11 of distal-most anchor 10 are urged past flexible reaction members 29, that are fixed with respect to delivery tube 23, such that at least penetration shaft 12 of distal-most anchor 10 is exposed past the distal end 31 of delivery tube 23. (see Para. 0032).

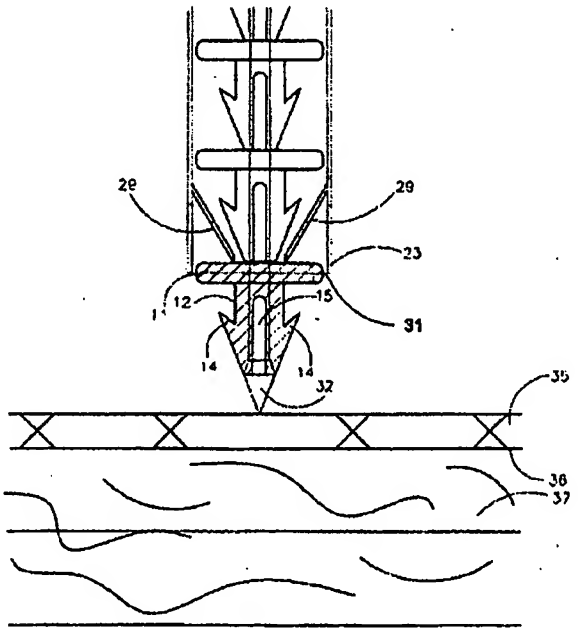

FIG. 9

Rather, Kuhns discloses a device that has at least three states or steps, as seen in FIGS. 14, 19, and 20 below. "The partial movement or activation of the trigger 85 can translate or move the first and second sliders 60, 70 distally (downwardly in FIG. 14) from the initial position shown in FIG. 14. As illustrated in FIG. 19, the surgeon has continued to actuate or

move the trigger 85, to the first position. Although shielded from tissue contact by the end effector 95, the first and second barbs 107, 108 of the distal most fastener 105 are placed within tissue of the inguinal floor 126. (Col. 17, lns. 10-20) (emphasis added). "In FIG. 20, the first slider 60 has partially moved or retracted into the shaft 92. This action can released [sic] the first and second barbs 107, 108 of the distal most fastener 105 from the constrained condition shown in FIG. 19 and fixably engaged the first barb 107 with the tissue of the inguinal floor 126." (Col. 17, lns. 32-37). Accordingly, the surgical anchor in Kuhns is not exposed beyond the distal end of the delivery tube in the second state, as recited in claim 16.

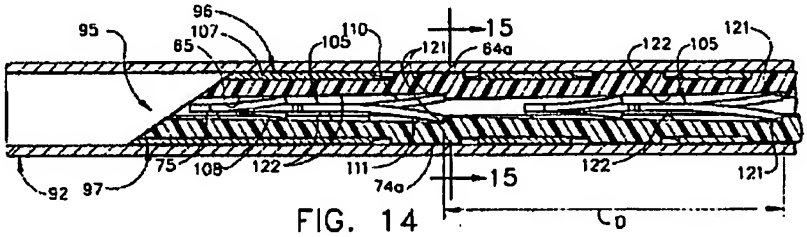

FIG. 14

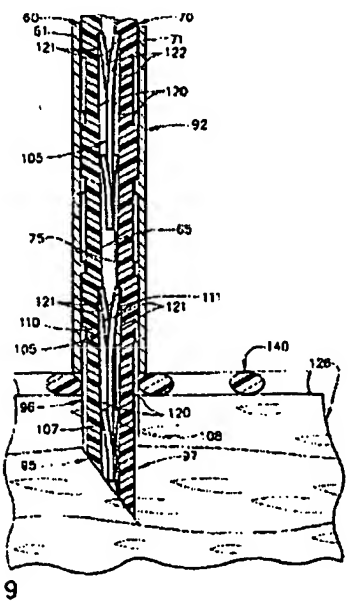

FIG. 19

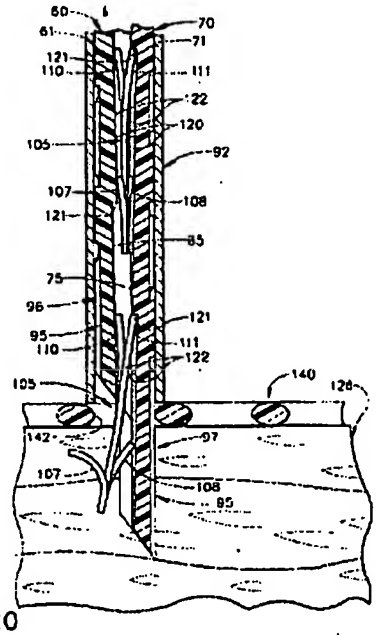

FIG. 20

Assuming, *arguendo*, that the end effector 95 is equivalent to the distal end of the delivery tube and that FIG. 19 was the initial position, the surgical anchor is still not exposed beyond the distal end of the delivery tube, as illustrated in Kuhns' FIG. 20 and required by present claim 16.

Accordingly, Kuhns fails to teach each and every feature of claim 16 in that Kuhns fails to teach and/or disclose an actuator being in a second state that causes the surgical anchor to be exposed beyond the distal end of the delivery tube, as recited in claim 16.

Applicant therefore respectfully submits, in view of the arguments presented above, that independent claim 16 is allowable over Kuhns.

Since claims 18-22 depend, directly or indirectly, from claim 16 and contain all of the features of claim 16, for the reasons presented above regarding the patentability of claim 16, Applicant respectfully submits that each of claims 18-22 is also patentable over Kuhns.

Claim 17 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kuhns.

Applicant respectfully submits that since claim 17 depends directly from claim 16 and contains all of the features of claim 16, for the reasons presented above regarding the patentability of claim 16 over Kuhns, Applicant respectfully submits that claim 17 is also patentable over Kuhns.

In view of the remarks and arguments presented above, it is respectfully submitted that each of the rejections raised by the examiner in the present Office Action have been overcome.

It is respectfully submitted that none of the references of record, considered individually or in any proper combination with one another, disclose or suggest the present invention as claimed.

New independent claims 23 and 30, as well as respective dependent claims 24-29 and 31-35, have been added herein, are fully supported by the specification as originally filed and are believed to be allowable over the art of record.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, or resolve any outstanding matters, the Examiner is sincerely invited to contact the Applicant's undersigned representative at the number indicated below.

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of claims 16-35 is earnestly solicited.

Respectfully submitted,

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